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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,125	08/27/2003	Richard D. Lohman	17791-01	4783
7590	02/05/2004		EXAMINER	
H. G. Bruss, Esq., Owens Illinois Inc. One SeaGate, 25-LDP Toledo, OH 43666			JACYNA, J CASIMER	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/649,125	LOHRMAN, RICHARD D.
	Examiner J. Casimer Jacyna	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 August 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-37 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/27/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18-81 of U.S. Patent No. 6,672,487. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

all of the limitations in application claims 1 and 18 are found in patent claims 18, 25 and 40. However, patent claims 18, 25 and 40 include additional limitations that have been omitted from application claims 1 and 18 such as a lid wherein it would have been obvious to one of ordinary skill in the art that limitations could have been omitted from patent claims 18, 25 and 40 for the purpose of obtaining broader legal coverage of the invention. It also would have been obvious to one of ordinary skill in the art that a subcombination set of elements could have been chosen from the combination of elements called for in patent claims 18, 25 and 40 and separately claimed.

all of the limitations in application claims 8 and 25 are found in patent claims 18, 25 and 40. However, patent claims 18, 25 and 40 include additional limitations that

have been omitted from application claims 8 and 25 such as a collar wherein it would have been obvious to one of ordinary skill in the art that limitations could have been omitted from patent claims 18, 25 and 40 for the purpose of obtaining broader legal coverage of the invention. It also would have been obvious to one of ordinary skill in the art that a subcombination set of elements could have been chosen from the combination of elements called for in patent claims 18, 25 and 40 and separately claimed.

all of the limitation in application claim 13 are found in patent claims 18 and 40. However, patent claims 18 and 40 include additional limitations that have been omitted from application claim 13 such as a lid wherein it would have been obvious to one of ordinary skill in the art that limitations could have been omitted from patent claims 18 and 40 for the purpose of obtaining broader legal coverage of the invention. It also would have been obvious to one of ordinary skill in the art that a subcombination set of elements could have been chosen from the combination of elements called for in patent claims 18 and 40 and separately claimed.

all of the limitations in application claims 26 and 33 are found in patent claim 73. However, patent claims 26 and 33 include additional limitations that have been omitted from application claims 26 and 33 such as a lid that has been omitted from claim 26 and a collar that has been omitted from 33 wherein it would have been obvious to one of ordinary skill in the art that limitations could have been omitted from patent claim 73 for the purpose of obtaining broader legal coverage of the invention. It also would have been obvious to one of ordinary skill in the art that a subcombination set of elements

could have been chosen from the combination of elements called for in patent claim 73 and separately claimed.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8, 9, 11, 12, 25 and 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Okawa et al. (5,897,033). Okawa discloses a dispensing closure including a closure base with a ledge as is the planar portion connecting 11 to 24, a skirt as is the annular wall inside 11 threaded to the container as shown in figure 3a, a ledge opening 24, a lid 4 with two snap hinges as shown in figure 1, a dispensing valve with a peripheral portion that is secured by the downwardly extending wall shown in figure 2a that defines the lower part of opening 24, an annular wall 21, a concave portion 22 and a cross slit 23.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okawa et al. (5,897,033) in view of Gross (6,186,374). Okawa discloses a dispensing closure substantially as claimed but does not disclose snap beads for holding the lid in place. However, Gross teaches another dispensing closure having snap beads 50, 66 and 68

for the purpose of ensuring that the lid remains secured to the base until forcefully removed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Okawa with snap beads as, for example, taught by Gross in order to ensure that the lid remains secured to the base until forcefully removed.

7. Claims 1-7, 13-24 and 26-32 would be allowable if the double patenting rejection is overcome.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 703-308-1508. The examiner can normally be reached on Tue. thru Thu. 9AM-8PM, Fri. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Casimer Jacyna
Primary Examiner
Art Unit 3751

JCJ